

Chapter S-L 9

PROHIBITED LOANS

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S-L 9.01 Statement of policy. (1) Except for loans that are specifically permitted to be made to association personnel and can be considered a reasonable fringe benefit of employment, the public interest is not best served when savings and loan funds that might otherwise be available for loans to the general public are used to benefit association insiders.

(2) The commissioner recognizes that it is virtually impossible to anticipate all situations in which the best interests of association insiders might conflict with those of the general public or might adversely affect the soundness of the association's loan underwriting. However, it is the purpose of this chapter and s. 215.21 (17) of the statutes to identify transactions likely to result in such situations and to prohibit them outright or require specific action on the part of the association's board of directors before they are permitted to occur. Each association is expected to remain alert to other situations that may affect the soundness or objectivity of its lending program, and to make a reasonable effort to avoid them.

(3) An association, service corporation or subsidiary may make a loan to, or enter into a transaction with, an affiliated person or a business venture in which a director, officer or employee has an interest only if:

(a) The loan or transaction is reasonably considered to be in the best interests of the association; and

(b) The sound administration and management of the loan or transaction by the association, service corporation or subsidiary is reasonably considered not to be adversely influenced by the conflict between the interests of the association, service corporation or subsidiary and the interests of the affiliated person or business venture.

(4) Insured associations are also subject to federal insurance regulations pertaining to insider loans. This chapter should be read in connection with those regulations.

Note: This introductory statement of policy is included only for the purpose of putting the chapter into perspective and giving readers a better understanding of its "spirit".

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78, renum. (3) to be (4), cr. (3), Register, December, 1984, No. 348, eff. 1-1-85.

S-L 9.02 Definitions. In this chapter and s. 215.21 (17) (b) of the statutes:

(1) "Affiliated person" means:

(a) A director, officer or employee of an association;

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(b) A spouse or a legal dependent of a director, officer or employee of an association; or

(c) A business venture in which a person listed under par. (a) or (b) has a reportable interest.

(2) "Association" means a savings and loan association chartered by this state.

(3) "Business venture" means any partnership, joint venture, corporation or similar entity, but does not include any non-profit, religious, charitable or fraternal organization or a corporation in which the association has been authorized to invest by the commissioner.

(4) "Commissioner" means the commissioner of savings and loan or his or her authorized representative.

(5) "Director" means a person who is a member of a board of directors, but does not include an advisory director.

(6) "Employee" means a person who is:

(a) Employed by an association and is directly involved in approving loans made by the association or determining the terms or conditions under which any specific loan is made.

(b) Employed by an association and is directly involved in approving transactions, or in determining the terms or conditions of transactions entered into by the association.

(7) "Legal dependent" means a person treated as a dependent for federal income tax purposes.

(8) "Officer" means a president, vice president or secretary, but does not include any assistant officer.

(9) "Reportable interest" means an interest in debt or equity of a business venture other than an interest:

(a) In debt of a business venture of not more than \$10,000 or 5% of the assets of the business venture, whichever is greater; or

(b) Of 5% or less of the stock of a corporation or of 5% or less in a limited partnership.

(10) "Transaction" means a purchase, agreement or contract, or series of related purchases, agreements or contracts, which result in the receipt of revenue aggregating \$30,000 or more by an affiliated person, but does not include:

(a) A loan; or

(b) An agreement or contract with, or compensation provided, a director, officer, employee or other personnel of an association which is customarily related to their employment.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; renum. (1) to (9) to be (2) to (10) and am. (5) and (6), cr. (1), Register, April, 1982, No. 316, eff. 5-1-82; r. and recr. Register, December, 1984, No. 348, eff. 1-1-85.

S-L 9.03 Conflict of interest; Restrictions on loans and transactions.

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(1) An association shall notify the commissioner in writing when it makes a loan for commercial or investment purposes to an affiliated person if the aggregate commercial credit extended by the association to the affiliated person will exceed \$10,000. The notice shall describe all other extensions of commercial credit to the person.

(2) An association, service corporation or subsidiary may not make a loan to an affiliated person if the aggregate amount loaned by the association and its service corporations and subsidiaries will exceed \$100,000 except:

(a) Mortgage loans by the association to directors, officers or employees or a spouse or legal dependent secured by the borrower's principal residence are excluded from the calculation of the aggregate amount of credit extended.

(b) Loans to an affiliated person for personal, family or household purposes which result in the aggregate amount of credit not exceeding \$25,000 or a greater amount approved in writing by the commissioner are excluded.

(3) An association, service corporation or subsidiary may not make a loan to an affiliated person unless it is at terms, in the amount and with an interest rate substantially the same as those prevailing at the same time for comparable loans made to members of the general public of similar credit status except:

(a) An association may make a mortgage loan to a director, officer or employee or a spouse or legal dependent which is secured by the borrower's principal residence at an interest rate not below its current cost of funds, including all savings accounts and borrowings.

(b) An association may make a loan for personal, family or household purposes to an affiliated person at an interest rate not below its current cost of funds, including all savings accounts and borrowings, if the aggregate amount of credit extended under this paragraph after the loan is made will not exceed \$25,000.

(4) No association may make a mortgage loan prohibited under s. 215.21 (17), Stats.

(5) No association, service corporation or subsidiary may enter into a transaction with an affiliated person unless:

(a) The association has reasonably determined the consideration, terms and price for the transaction are at least as favorable to the association as could be obtained from other persons;

(b) The board of directors of the association approves the transaction after full disclosure; and

(c) The gross amount paid to or revenue received by the affiliated person as the result of the transaction does not exceed .02% of assets of the association or \$100,000 whichever is greater, but not more than \$500,000, in an association fiscal year unless the commissioner approves the transaction in writing before the association, service corporation or subsidiary enters into it.

(6) (a) An association, service corporation or subsidiary may make a loan to or enter into a transaction with a business venture employing an

officer, director or employee of the association, or the spouse or legal dependent of such an officer, director or employee, without written approval from the commissioner only if:

1. The officer, director or employee of the association who is employed by the business venture or whose spouse or legal dependent is employed by the business venture does not in any way participate in approving the loan or transaction or determining the specific terms or conditions of the loan or transaction; and

2. The loan or transaction is brought before the association's board of directors for individual consideration, and is approved by a resolution of the board before the association is in any way committed to make the loan or enter into the transaction.

(b) For purposes of this subsection, any person who receives compensation from a business venture for services rendered as an officer, director or salaried employee of that venture is deemed to be employed by that business venture.

(7) No director, officer or employee may participate in approving, enter into or accept a loan or transaction which violates this section.

(8) The burden of proof is on the association, service corporation or subsidiary and association directors, officers and employees to demonstrate compliance with this section in any action or proceeding initiated by the commissioner because of a violation.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; r. and recr. (1), renum. (2) to be (6) and am. (6) (a), cr. (2) to (5), (7) and (8), Register, December, 1984, No. 348, eff. 1-1-85.

S-L 9.035 Merger; compensation. (1) As a condition precedent to the commissioner's consent to an absorption under s. 215.53 or 215.73, Stats., compensation, including deferred compensation, to officers, directors or employees of the absorbed association by the surviving association, its service corporation or subsidiaries may not be in excess of that which is reasonable and commensurate with their duties and responsibilities. The application for consent under s. 215.53 or 215.73, Stats., shall fully justify the compensation to be paid. This subsection applies only to compensation agreed to or negotiated for in connection with an absorption.

(2) Except as provided under sub. (3) compensation is rebuttably presumed to be unreasonable under sub. (1) if:

(a) A director, officer or employee is to receive a material increase in compensation above that paid by an absorbed association prior to commencement of merger negotiations. An increase in compensation in excess of 15% or \$10,000, whichever is greater, is a material increase.

(b) Advisory directors of the surviving association who were directors, advisory directors, officers or employees of the absorbed association receive compensation which is:

1. For other than meetings attended or services actually performed; or

2. In excess of an increase of 15% above the director fees paid by the absorbed association prior to commencement of merger negotiations, unless the compensation does not exceed the fee per monthly meeting at

tended that the advisory directors of the acquiring association receive or \$250, whichever is greater.

(3) Subsection (2) does not apply if the surviving association is a stock association and the absorption is approved by a vote of the members or stockholders of the absorbed association under s. 215.58 or ch. 180, Stats.

(4) Factors the commissioner will consider in determining whether the presumption under sub. (2) is rebutted include, but are not limited to:

(a) The director, officer or employee will significantly increase his or her commitment to employment with the surviving association, as, for example, from part-time employment to full-time.

(b) The director, officer or employee will assume responsibilities and duties with the surviving association which are significantly different from and more responsible and demanding than his or her duties prior to the absorption.

History: Cr. Register, December, 1984, No. 348, eff. 1-1-85.

S-L 9.04 Reports on interests and involvements in business ventures. (1) **REPORTING REQUIREMENTS.** At least once each year the board of directors of each association shall obtain from each of the association's officers, directors and employees, other than employees serving solely as advisory directors, a sworn statement containing the information required under sub. (2). Each officer, each director, and each employee, other than an employee serving solely as an advisory director, of an association shall provide the association with such a statement and shall disclose any new reportable interest to the board within one month after its acquisition.

(2) **INTEREST TO BE DISCLOSED.** The report required under sub. (1) shall identify for each director, officer and employee and his or her spouse and legal dependents:

(a) Their reportable interests; and

(b) Each position they hold as a director, officer or salaried employee of a business venture.

(3) **VALUATION OF REPORTABLE INTERESTS.** For purposes of determining whether an interest is reportable under this section:

(a) The value of unlisted securities traded in the over-the-counter market is the average of the bid and asked price.

(b) The value of securities for which no market information is readily available is:

1. In the case of common stock or equivalent securities, net worth divided by the number of outstanding voting shares times the number of shares held.

2. In the case of preferred stock, redemption price, or par or stated value if not redeemable.

3. In the case of debt securities, the unpaid balance.

4. In the case of an interest in the capital of a partnership, the net worth of the partnership times the percentage of interest held.

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(4) **NATURE OF DISCLOSURE.** Reports required under this section need only disclose the existence of any reportable interest, and need not disclose its specific value.

Note: The disclosure requirements of this section are patterned after (but somewhat less comprehensive than) the disclosures that the state ethics board requires of public officials.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (1) and (2) (intro.), Register, April, 1982, No. 316, eff. 5-1-82; r. and recr. (2), Register, December, 1984, No. 348, eff. 1-1-85.